

# SENATE BILL REPORT

## SB 5635

---

As Passed Senate, March 6, 2017

**Title:** An act relating to retail theft with special circumstances.

**Brief Description:** Concerning retail theft with special circumstances.

**Sponsors:** Senators Padden, Pedersen, Angel, Palumbo, O'Ban, Wilson, Rossi and Zeiger.

**Brief History:**

**Committee Activity:** Law & Justice: 2/07/17, 2/16/17 [DP].

**Floor Activity:**

Passed Senate: 3/06/17, 47-2.

**Brief Summary of Bill**

- Clarifies that retail theft with special circumstances can be committed while possessing any item or device used under circumstances indicating an intent to use or employ for the theft.
- Clarifies the item or device does not have to be designed specifically to overcome security systems.

---

### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel, Darneille, Frock and Wilson.

**Staff:** Aldo Melchiori (786-7439)

**Background:** Retail theft with special circumstances is theft from a mercantile establishment with one of the following special circumstances:

- to facilitate the theft, the person leaves the mercantile establishment through a designated emergency exit;
- the person was, at the time of the theft, in possession of an item, article, implement, or device designed to overcome security systems including, but not limited to, lined bags or tag removers; or

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

- the person committed theft at three or more separate and distinct mercantile establishments within a 180-day period.

Retail theft with special circumstances in the first degree involves theft of property worth \$5,000 or more. It is a Class B felony ranked at Level III on the sentencing grid—1-3 months for a first offense and/or a \$20,000 fine. A person is guilty of retail theft with special circumstances in the second degree if the property is worth \$750 to \$4,999. Retail theft with special circumstances in the second degree is a Class C felony ranked at Level II on the sentencing grid—0-90 days for a first offense and/or up to a \$10,000 fine. Retail theft with special circumstances in the third degree involves theft of property worth under \$750. It is an unranked Class C felony—0-364 days for a first offense and/or up to a \$10,000 fine.

In *State v. Larsen*, the Washington Supreme Court held that an ordinary pair of pliers was not a tool designed to overcome security systems. The court held that, to be a violation, the tools are limited to those created, whether by the defendant or a manufacturer, with the specialized purpose of overcoming security systems. Subsequently in *State v. Wade*, the Division III Court of Appeals held that a series of arranged magnets along a key, used to unlock security cabinets, satisfied this requirement.

**Summary of Bill:** Retail theft with special circumstances can be committed using any implement, article, item, or device used, under circumstances indicating the intent to use them, to overcome security systems. The item does not have to be specifically designed for that purpose.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This will take into account and respond to the court decisions. In the decision, the court observed that the Legislature could have specifically provided for mere use. Thieves use whatever they can to defeat security. Businesses spend time and money for these security devices. It is not typical to see tools specifically designed to defeat security.

**Persons Testifying:** PRO: Mark Johnson, Washington Retail Association; Carolyn Logne, Washington Food Industry Association; Robert Peterson, Redmond Police Department.

**Persons Signed In To Testify But Not Testifying:** No one.